Section 428, Title 31, of the United States Code, relating to the issuance of gold certificates in exchange for gold bullion, provides in part:

> "The bullion deposited for or representing the certificates of deposit shall be retained in the Treasury for the payment of the same on demand."

Section 429 of the same Title, relating to the issuance of gold certificates in exchange for gold coin, contains a similar provision, as follows:

> "* * * and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose."

We submit that reference to these statutes, the gold certificates and the statement of facts in the petition, admitted by the Government by virtue of its demurrer, as well as the ruling in *Bank of Boston* v. *United States*, 10 Court of Claims 519, affd. 96 U. S. 30, conclusively establishes the inapplicability of the *Woodruff Case, supra.*

The decision of the Supreme Court in *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, is also clearly irrelevant. The Court there upheld the Minnesota Mortgage Law which did not in any wise involve the taking of property by the Government.

The reservation to the Legislature of the sovereign power to alter or amend contracts, upheld in said decision, in no wise permits the Government to repudiate or appropriate its own agreements without just compensation. The cases cited in Point II of this memorandum fully demonstrate that the Government, even when exercising a sovereign power, is obliged to make just compensation for any contract taken by it in the exercise of such power, and that the power to alter or amend agreements does not imply the power to condemn or repudiate contracts solemnly made by it.

On this point, see also: *Shields* v. *Ohio*, 95 U. S. 319, 24 L. Ed. 357-9; Sinking Fund Cases, 99 U. S. 700.

That the reservation of the power to alter or amend does not imply the power to repudiate or condemn, even though the original agreement is made with the United States Government, was distinctly pointed out by Mr. Justice Strong in the Sinking Fund Cases, 99 U. S. 700, 25 L. Ed. 506; (p. 732):

> "* * * it is as much beyond the power of a legislature under any pretense, to alter a contract into which the government has entered, with a private individual, as it is for any other party to a contract to change its terms without the consent of the person contracting with him. *As to its contract the government in all its departments has laid aside its sovereignty, and it stands on the same footing with private contractors.*" (italics ours)

United States, et al. v. *Bankers Trust Co., et al.*, Docket Nos. 471, 472, and *Norman* v. *Baltimore & Ohio R. R. Co.*, Docket No. 270, are clearly distinguishable from the case at bar, and the decisions in said cases will be in no wise applicable. Those cases involve the constitutionality of Public Resolution No. 10 (now Section 463, Title 31, U. S. C. A.), passed by Congress on June 5, 1933. Public Resolution No. 10 does not involve a repudiation by the Government of its own contracts, nor does it involve a condemnation by the Federal Government of property of residents of this country. The said Resolution did not effect a direct appropriation by the Government of properties belonging to individuals. The creditors in said cases suffered consequential injuries as a result of the exercise by the Government of its undoubted constitutional right to regulate the currency.

Those suits involve a statement of facts analogous to those involved in *L. & N. R. Co.* v. *Mottley* (1911), 219 U. S. 467, 34 L. R. A. (N.S.) 671; and *Mondou* v. *New York, N. H. & H. R. R. Co.* (1912), 223 U. S. 1, 38 L. R. A. (N. S.) 44; where the Court upheld legislation which resulted in a modification or abrogation of private contracts as a result of an enactment passed by Congress in the exercise of a power given to it, to wit, the power to regulate interstate commerce.

The reservation of this power, however, in no wise permits the Government to repudiate or appropriate agreements without just compensation. The cases heretofore cited in this memorandum fully demonstrate that the defendant, even when exercising a sovereign power, is obligated to make just compensation for any contract taken by it in the exercise of such power.

CONCLUSION.

We submit that the authorities cited and quoted in this brief indubitably sustain the following propositions:

(1) that, on January 17, 1934, plaintiff, by virtue of his possession of the gold certificates, Series of 1928, mentioned in the petition herein, was the holder of an express contract, whereby the United States in its corporate or proprietary capacity agreed to pay to him, upon the tender of his gold certificates, gold coin of the value of $170,634.07;

(2) that having expropriated this property by virtue of the Emergency Banking Act of March 9, 1933 and the decree of the Secretary of the Treasury of December 28, 1933 issued thereunder, the defendant was obliged to pay to petitioner just compensation for the property thus taken;

(3) that the payment to claimant, in exchange for his gold certificates of the nominal value of $106,300, of the sum of $106,300 in currency, not redeemable in gold, was not just compensation;

(4) that the petitioner herein is entitled to receive a further, sum, to wit, $64,334.07, representing the difference between the market price on January 17, 1934 of the gold that petitioner was entitled to receive and the face amount of the currency actually paid to the petitioner and received by him under protest;

(5) that, since the refusal of the defendant to pay petitioner the gold coin that was due constituted a breach of an express agreement between petitioner and the defendant, petitioner's action is properly maintainable in the Court of Claims.

It follows that all of the questions certified to this Court by the Court of Claims should be answered in the affirmative.

Respectfully submitted,

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MAXWELL C. KATZ
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Of Counsel.

APPENDIX

TITLE 31. U. S. CODE ANNOTATED. MONEY AND FINANCE

*** Ch. 8. Coins, Coinage and Currency.

§ 314. *Standard unit of value.*—The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity. (R.S. § 3511; Mar. 14, 1900, c. 41, § 1, 31 Stat. 45.)

§ 428. *Gold certificates in exchange for gold bullion.*—The Secretary of the Treasury is authorized to receive deposits of gold bullion with the Treasurer or any agencies designated under section 476 of this title, in sums not less than $20, and to issue certificates therefor, in denominations of not less than $20 each, corresponding with the denominations of the United States notes. The bullion deposited for or representing the certificates of deposit shall be retained in the Treasury for the payment of the same on demand. And certificates representing coin in the Treasury may be issued in payment of interest on the public debt, which certificates, together with those issued for coin and bullion deposited, shall not at any time exceed 20 per centum beyond the amount of coin and bullion in the Treasury (R.S. § 254).

§ 429. *Deposits of gold coin; gold certificates.*—The Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer, or any of the agencies designated under section 476 of this title, in sums of not less than $20, and to issue gold certificates therefor in denominations of not less than

$10, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates when received for customs, taxes, and all public dues may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided,* That whenever and so long as the gold coin and bullion held in the reserve fund in the Treasury for the redemption of United States notes and Treasury notes shall fall and remain below $100,000,000 the authority to issue certificates as herein provided shall be suspended: *And provided further,* That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed $60,000,000 the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further,* That of the amount of such outstanding certificates one fourth at least shall be in denominations of $50 or less: *And provided further,* That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of $10,000, payable to order: *And provided further,* That the Secretary of the Treasurer[1] may, in his discretion, receive, with the agencies designated under section 476 of this title, in New York and in San Francisco, deposits of foreign gold coin at their bullion value in amounts of not less than $1,000 in value and issue gold certificates therefor of the description herein authorized: *And provided further,* That the Secretary of the Treasury may, in his discretion, receive, with the Treasurer or any agencies designated under section 476 of this title, deposits of gold bullion bearing the stamp of the coinage mints of

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[1] "Treasurer" should be "Treasury."

the United States, or the assay office in New York, certifying their weight, fineness, and value, in amounts of not less than $1,000 in value, and issue gold certificates therefor of the description herein authorized.

But the amount of gold bullion and foreign coin so held shall not at any time exceed two thirds of the total amount of gold certificates at such time outstanding. (R.S. §254; July 12, 1882, c. 290, §12, 22 Stat. 165; Mar. 14, 1900, c. 41, §6, 31 Stat. 47; May 26, 1906, c. 2558, 34 Stat. 202; Mar. 4, 1907, c. 2913, §1, 34 Stat. 1289; Mar. 2, 1911, c. 190, 36 Stat. 964; June 12, 1916, c. 142, 39 Stat. 225; May 20, 1920, c. 214, §1, 41 Stat. 654.)

[PUBLIC LAW—NO. 1—73D CONGRESS]
(H. R. 1491)

AN ACT To provide relief in the existing national emergency in banking, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.

TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders, and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

"(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations, and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations, and corporations. Upon receipt of such coin, gold bullion, or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the

Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations, and restrictions as may be prescribed by the Secretary of the Treasury, with approval of the President. Any individual, partnership, corporation, or association, or any director, officer, or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

[PUBLIC RESOLUTION—NO. 10—73D CONGRESS]

(H. J. RES. 192)

JOINT RESOLUTION To assure uniform value to the coins and currencies of the United States

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the or-

derly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

Approved, June 5, 1933, 4:40 p.m.

ORDER OF THE SECRETARY OF THE TREASURY REQUIRING THE DELIVERY OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES TO THE TREASURER OF THE UNITED STATES (DECEMBER 28, 1933)

WHEREAS Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking, and for Other Purposes", provides in Subsection (n) as follows:

> Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations, and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals,

partnerships, associations, and corporations. Upon receipt of such gold coin, gold bullion, or gold certificates, the Secretary of the Treasury shall pay therefore an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise.

and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., ACTING SECRETARY of the TREASURY, do hereby require every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

A. Gold bullion owned by a person now holding such gold under a license heretofore granted by or under authority of the Secretary of the Treasury, pursuant to the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange;

B. Gold coin having a recognized special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces);

C. Unmelted scrap gold and gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

D. Gold coin, gold bullion, and gold certificates owned by a Federal reserve bank or the Reconstruction Finance Corporation; and

E. Gold bullion and foreign gold coin now situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States.

SECTION 2. *Delivery.*—The gold coin, gold bullion, and gold certificates herein required to be paid and delivered to the Treasurer of the United States shall be delivered by placing the same forthwith in the custody of a Federal reserve bank or branch or a bank member of the Federal Reserve System for the account of the United States and by forwarding confirmation that the gold coin, gold bullion, and gold certificates have been so placed in custody for the account of the United States and are held subject to the order of the Treasurer of the United States, signed by such bank and the person making the delivery (or the authorized agent of such person) to the Treasurer of the United States, Washington, D. C., in a postage prepaid envelope bearing a

postmark dated prior to midnight of the day the gold coin, gold bullion, and gold certificates are so placed in custody.

SECTION 3. *Payment and Reimbursement of Costs.*—Upon receipt of the confirmation signed and delivered as required under Section 2, the Secretary of the Treasury will pay for the gold coin, gold bullion, and gold certificates placed in custody for the account of the United States in accordance with Section 2, an equivalent amount of any form of coin or currency, coined or issued under the laws of the United States, designated by the Secretary of the Treasury. The Secretary of the Treasury will pay all costs of the transportation of such gold coin, gold bullion, and gold certificates to the Federal reserve bank or branch or bank member of the Federal Reserve System in the city or town nearest to the place where such gold coin, gold bullion, and gold certificates are now situated, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Persons desiring reimbursement for such costs actually incurred shall submit their accounts on voucher forms which may be obtained by writing to the Treasurer of the United States, Washington, D. C.

SECTION 4. *Definitions.*—As used in this Order, the term "person" means any individual, partnership, association, or corporation; the term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "gold coin" means any coin containing gold, including foreign gold coin; and the term "gold bullion" means any gold which has been put through a process of smelting or refining that is in such form that its value depends upon

the gold content and not upon the form, but does not include gold coin or metals containing less than five troy ounces of fine gold per short ton.

SECTION 5. Any individual, partnership, association, or corporation failing to comply with any requirement hereof or of any rules or regulations issued by the Secretary of the Treasury hereunder shall be subject to the penalty provided in Section 11 (n) of the Federal Reserve Act, as amended.

This order may be modified or revoked at any time.

H. MORGENTHAU, JR.,

Acting Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE

December 28, 1933.

ORDER OF THE SECRETARY OF THE TREASURY SUPPLEMENTING THE ORDER OF DECEMBER 28, 1933, REQUIRING THE DELIVERY OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES TO THE TREASURER OF THE UNITED STATES (JANUARY 15, 1934)

WHEREAS on December 28, 1933, I, HENRY MORGENTHAU, JR., as ACTING SECRETARY of the TREASURY, issued an Order under authority of Section 11 of the Federal Reserve Act of December 23, 1913, as amended by Section 3 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for Other Purposes";

WHEREAS said Order, as amended by an Order of January 11, 1934, required every person subject to the jurisdiction of the United States forthwith to pay and deliver to the Treasurer of the United States all gold coin, gold bullion, and gold certificates situated in the United States, owned by such person, except as follows:

A. Gold bullion owned by a person now holding such gold under a license heretofore granted by or under authority of the Secretary of the Treasury, pursuant to the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange;

B. Gold coin having a recognizezd special value to collectors of rare and unusual coin (but not including quarter eagles, otherwise known as $2.50 pieces, unless held, together with rare and unusual coin, as part of a collection for historical, scientific, or numismatic purposes, containing not more than four quarter eagles of the same date and design, and struck by the same mint);

C. Unmelted scrap gold and gold sweepings in an amount not exceeding in the aggregate $100 belonging to any one person; and gold which has been put through a process of fabrication for a specific and customary industrial, professional, or ornamental use;

D. Gold coin, gold bullion, and gold certificates owned by a Federal reserve bank or the Reconstruction Finance Corporation; and

E. Gold bullion and foreign gold coin now situated

in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, owned by a person not domiciled or doing business in the continental United States;

WHEREAS a reasonable time has elapsed within which any person required to deliver gold coin, gold bullion, and gold certificates could pay and deliver to the Treasurer of the United States in the manner provided in said Order of December 28, 1933, the gold coin, gold bullion, and gold certificates situated in the United States, owned by such person; and

WHEREAS in my judgment such action is necessary to protect the currency system of the United States;

NOW, THEREFORE, I, HENRY MORGENTHAU, JR., SECRETARY of the TREASURY, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin, gold bullion, or gold certificates may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 193, as amended.

In the event that any gold coin, gold bullion, or gold certificates withheld in noncompliance with said Order and of this Order are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any

such coin, bullion, or certificates after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11 (n) of the Federal Reserve Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.

The definitions of the terms "person", "United States", "gold coin", and "gold bullion" contained in Section 4 of said Order of December 28, 1933, apply equally to such terms as used in this Order.

H. MORGENTHAU, JR.,

Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE

January 15, 1934.